**In the High Court of Punjab and Haryana, Chandigarh.**

**C.W.P.No.19342 OF 2005**

Date of Decision: 20.11.2006

C.D.Aneja …Petitioner.

Versus

State of Haryana & Others. …Respondents.

**CORAM: HON'BLE MR.JUSTICE M.M.KUMAR**
**HON'BLE MR.JUSTICE M.M.S.BEDI**

Present: Mr.G.P.Singh, Advocate for the Petitioner.

Mr.Harish Rathee, Sr.DAG Haryana, for the Respondents.

**JUDGMENT**

**M.M.KUMAR, J.**

The short question raised in this petition filed under Article 226 of the Constitution is whether an employee could withdraw his application for voluntary retirement before the intended date given by him in his application. The prayer made by the petitioner in the instant petition is that order dated 6.12.2005 (Annexure P7) passed by the Principal & Director, Moti Lal Nehru School of Sports, Rai, District Mewat, respondent No.2, relieving him from the post of Mess Supervisor be quashed. He has further

sought directions to reinstate him in service with all consequential benefits.

Mr.C.D.Aneja has been working on the post of Mess Supervisor at the Sports School – respondent No.2. On attaining the age of 55 years, his record was examined and he was allowed to continue in service. The aforementioned order dated 13.6.2005 (Annexure P2) was passed by respondent No.2 under Rule 3.26 (a) of the Punjab Civil Services Rules, Volume-I, Part-I (as applicable to Haryana) subject to the condition that his work and conduct continues to be satisfactory during the period of extension. The petitioner on 7.9.2005 applied for voluntary retirement and in that regard an application was filed by him before respondent No.2 (Annexure P3). The request made by him was accepted by respondent No.2 vide his letter dated 10.10.2005 (Annexure P4). It was stipulated in the letter of acceptance that the petitioner would stand relieved form his duty on 6.12.2005 (A.N.). It shows that on 10.10.2005 the intended date of retirement of the petitioner was acknowledged and accepted as per the terms of his application. Before the expiry of the aforementioned period, the petitioner moved an application withdrawing his request for voluntary retirement on 29.11.2005 (Annexure P6). Without noticing the request for withdrawal of voluntary retirement made by the petitioner on 29.11.2005, respondent No.2 passed the impugned order dated 6.12.2005 relieving him from service (Annexure P7). The aforementioned order is subject matter of challenge in this petition.

The stand taken by respondents in their written statement is that instructions dated 1.8.1980 (Annexure R7) which deal with voluntary retirement after completion of 20 years of qualifying service provided that an application for voluntary retirement could be permitted to be withdrawn by respondent No.2 and after withdrawal of such an application has not been permitted by respondent no.2 then there is no escape to voluntary retirement on the intended date given in the application. It has been asserted that Mess staff along with other posts of the respondent School has been put in the diminishing cadre and, therefore, any vacancy caused by retirement/voluntary retirement or death was not to be filled up. In other words, such a vacancy would cease to exist. The aforementioned policy decision stated to have been taken by the respondent in order to enable respondent No.2 to lease the Mess on contract in a phased manner. However, the facts with regard to the date of filing of application for voluntary retirement and passing of order accepting that application has not been disputed as also the fact with regard to the application withdrawing the notice of voluntary retirement and the acceptance of the application earlier to the intended date of retirement.

Mr.Gurinder Pal Singh, learned counsel for the petitioner has argued that the order dated 6.12.2005 (Annexure P7) suffers from patent illegality because it is well settled principle of law that a notice of voluntary retirement could be withdrawn before the intended date when the employee is to effectively retire despite acceptance of the same. According to the learned

counsel, the application giving three months' period for voluntary retirement was given by disclosing the intended date of voluntary retirement to be 6.12.2005. But on 29.11.2005 the aforementioned notice was withdrawn. However, the same was accepted by respondent No.2 on 10.10.2005 (Annexure P4) and the petitioner was relieved from duty on 6.12.2005. In support of his submission, learned counsel has placed reliance on the judgment of Hon'ble the Supreme Court in the case of **"J.N.Srivastava v. Union of India & Another" AIR (1998) 9 SCC 559** and argued that in the aforementioned precedent the employee had withdrawn his request for voluntary retirement before the intended date given by him. The authorities had, however, accepted his request for voluntary retirement and had relieved him on the intended date.

Mr.Harish Rathee, learned State counsel has submitted that withdrawal of request concerning voluntary retirement is not automatic and according to instructions dated 2.3.1984 (Annexure R7) such a request could be withdrawn subsequently only with the approval of appropriate authority. He has maintained that the Mess staff along with other posts has been declared as diminishing cadre and the vacancy caused by voluntary retirement of the petitioner cannot be filled up as such a vacancy ceased to exist. He has referred to the aforementioned fact made in para 3 of the written statement and argued that the petitioner avoided the responsibility of working in the Mess of the School-respondent No.2. He, instead of helping the administration to cope up with the temporary arrangement, had

instigated the Class-IV employees and had further sought voluntary retirement with other co-employees of similar status. He has urged that the competent authority had no other alternative except to reject his request for withdrawal of his notice for premature voluntary retirement. Some reference has also been made to the averments made in para 2 to assert that the petitioner had indulged in indiscipline and took part in the strike in the year 1993 when his services were terminated.

We have thoughtfully considered the submission made by the learned counsel for the parties and have also perused the record. We find that the instant petition merits acceptance. According to the instructions dated 2.3.1984 (Annexure R7) on which reliance by the respondent has been placed, it is clearly stipulated that the voluntary retirement after completion of 20 years of qualifying service is purely voluntary and the request for withdrawal of voluntary retirement is required to be made before the expiry of the notice period. The relevant clauses of instructions dated 2.3.1984 (Annexure R7) read as under:-

> "VI. <u>Voluntary Retirement after completion of twenty years qualifying service.</u>
>
> This scheme is purely voluntary, the initiative resting with the Government employee himself and the Government have no reciprocal right to retire Government on its own.
>
> Government employees, who have put in not less than twenty years qualifying service may, by

giving three months notice in writing to the appropriate authority, seek voluntary retirement from service.

'Retiring Pension' will be admissible under this scheme.

A notice of voluntary retirement may be withdrawn subsequently only with the approval of appropriate authority and request for such withdrawal has to be made before the expiry of the said notice".

A perusal of the aforementioned clauses of instructions would make it evident that in case three months' notice of voluntary retirement is sought to be withdrawn subsequently then approval of appropriate authority would be required and such a request for withdrawal has to be made before the expiry of the intended date as disclosed in the notice.

The aforementioned principle has infact been laid down by Hon'ble Supreme Court in various judgments. In that regard, reliance may be placed on the view taken by Hon'ble Supreme Court in case of **"Power Finance Corporation Limited v. Parmod Kumar Bhatia (1997)4 SCC 280**. It was held that voluntary retirement do not become effective until or unless the employee was relieved of his duty. The rationale supporting the principle as stated by their Lordships is that once the relationship of employer-employee comes to an end, it is then alone that a notice of voluntary retirement is to put beyond recall and cannot be withdrawn. Therefore, it has been held that the relationship of

employer-employee, if continues, and the employee has not been relieved of his duty after acceptance of voluntary retirement then the withdrawal by him would be effective.

Similar view has been taken by Hon'ble the Supreme Court in **"Balram Gupta v. Union of India" AIR 1987 SC 2354** and in the case of **J.N.Srivastava** (supra). In a recent judgment rendered in the case of **"State Bank of Patiala v. Phoolpati" (2005) 3 SCC 88** the same principle has been reiterated. The Hon'ble Supreme Court made reference to some of the aforementioned judgments and concluded as under:-

> "7. It is a settled position in law that unless the employee is relieved from the duty after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. (See *Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia*). Though much stress was laid by learned counsel for the respondent on this decision to contend that the resignation having not been accepted prior to 1-3-2002, the jural relationship continued, does not stand to logic. The undisputed fact is that after withdrawal of the letter of resignation, later Hari Ram was specifically asked to justify his claim that he had sought for resignation under mental tension. It was clearly indicated to him that in case of failure to justify the stand by producing documents, resignation was to be accepted. He did not choose to

file the documents asked for and he again reiterated the request for acceptance of his resignation. Much stress was laid by learned counsel for the respondent that letter received on 4-3-2002 was not dated. But the same is really of no consequence. The undisputed position is that the same was received on 4-3-2002 by the Branch Manager and was acted upon. The chain of events, as noted above, go to show that the last letter which was received by the Branch Manager on 4-3-2002 was in continuance of the earlier letter dated 7-1-2002. The fact remains that authorities wanted to verify the bonafides of claim that he had written the letter under mental tension. In any event, during his lifetime late Hari Ram never questioned the legality of the Bank's action in relieving him from duty w.e.f. 5-3-2002 by accepting his resignation. The admissible service benefits were accepted by the respondent.

8. A complete and effective act of resigning office is one which serves the link of the resignor with his office and terminates his tenure. This position was highlighted by a Constitution Bench of this Court in *Union of India v. Gopal Chandra Misra* and reiterated in *Balram Gupta v. Union of India, J.N.Srivastava v. Union of India, Nand Keshwar Prasad v. Indian Farmers Fertilizers Coop. Ltd.* and *Shambhu Murari Sinha v. Project and Development India Ltd."*

The principles laid down by Hon'ble the Supreme Court do not leave any manner of doubt that jural relationship between the parties must come to an end in order to render the acceptance of voluntary retirement ineffective. In other words, jural relationship of employer and employee continues to exist as is the case in hand then withdrawal of voluntary retirement can effectively be made. On the basis of instructions dated 2.3.1984 (Annexure R7), the principle based on sound reasoning and precedents the inevitable conclusion is that the order dated 6.12.2005 (Annexure P7) relieving the petitioner from the post of Mess Supervisor of respondent no.2 is unsustainable in the eyes of law and is patently illegal. Therefore, the writ petition deserves to be allowed.

For the reasons aforementioned, this petition succeeds and order dated 6.12.2005 (Annexure P7) is quashed. Accordingly, the petitioner is reinstated in service with all consequential benefits. He shall now be taken back in service within two weeks and arrears of his salary shall be paid to him within four weeks from the date a certified copy of this order is supplied to the respondents. No costs.

**(M.M.KUMAR)**
**Judge**

**November 20, 2006** **(M.M.S.BEDI)**
**dkb** **Judge**